IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 19 of 2004
with
CIVIL APPLICATION No 2474 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARVINDKUMAR MANGALKUMAR CHOKSHI
Versus
KANTABEN FAKIRBHAI PATEL

Appearance:
1. Civil Revision Application No. 19 of 2004 with
Civil Application No. 2474 of 2004
MR PR NANAVATI for Petitioner No. 1
MR KV SHELAT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/04/2004

ORAL JUDGEMENT

With the consent of the parties, this matter is

taken up for hearing today.

2) By filing this revision application, the petitioner has challenged the order passed by the appellate bench of the Small Causes Court, Ahmedabad in Civil Appeal No.191/2001, which was filed by the respondent herein, as the suit of the original plaintiff is decreed on the ground of arrears of rent. By the said order, the appellate bench of the Small Causes Court, Ahmedabad, has allowed the said appeal partly.

3) At the time of hearing of this Civil Revision Application, it has been pointed out by Mr.K.V.Shelat, learned advocate appearing for the respondent, that even though the interim relief is granted by this Court to the petitioner-tenant on usual terms, i.e., on clearing of taxes as well as depositing rent every month, the petitioner has not paid amount of tax amounting to about Rs.71,000/- and the petitioner has also not paid amount of rent for last about four to five months. It is submitted by Mr.Shelat that the liability of payment of tax is on the tenant. During the pendency of this Civil Revision Application, tenant has paid Rs.20,000/- towards arrears of tax amount, but even today a considerable amount towards tax is due. Mr.Shelat for the respondent submitted that the landlord is willing to forgo his claim about arrears of taxes as well as arrears of rent provided the petitioner hands over the vacant and peaceful possession of the suit premises by 30th June, 2004.

4) Mr.Nanavati, learned advocate for the petitioner, after taking instruction from his client who is present in the Court, states that the petitioner is not in a position to pay the arrears of taxes, nor the petitioner is in a position to pay any amount towards rent, as the petitioner is in financial crisis. He submitted that if the landlord is willing to forgo his claim of taxes, mesne profits as well as arrears of rent, his client is willing to hand over the possession of the suit premises by 30th June, 2004.

5) In view of above, the landlord has given go-by to his claim regarding arrears of taxes as well as arrears of rent. It is accordingly held that the respondent shall not be entitled to any amount of rent and taxes. The petitioner is directed to hand over the possession of the rented premises latest by 30th June, 2004. This time is given on the express condition that the petitioner shall file the usual undertaking before this Court on or before 5th May, 2004, stating that he is in exclusive

possession of the suit premises and without obstructing in any manner, he will hand over vacant and peaceful possession of the suit premises to the respondent on or before 30th June, 2004. If such undertaking is not filed, it will be open for the respondent to execute the decree for possession forthwith. However, if the undertaking is filed within the stipulated time, then the decree for possession should not be executed till 30th June, 2004. It is further directed that whatever amount is deposited by the petitioner before the trial Court upto this date, the respondent is entitled to withdraw the said amount unconditionally. This order is passed with the consent of both the sides and in view of the willingness shown by the petitioner to hand over the possession to the respondent and the respondent has agreed to forgo his claim about arrears of rent, mesne profits as well as arrears of taxes.

6) In view of the aforesaid order, Mr.Nanavati, after taking instruction from his client, wants permission to withdraw this Civil Revision Application. Permission is granted. Accordingly, this Civil Revision Application is disposed of as withdrawn. Rule is discharged. Interim relief stands vacated. No costs.

7) In view of the order in main Civil Revision Application, no order in Civil Application No.2474 of 2004.

(P.B.Majmudar,J.)

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